

SENATE BILL 3372

By Miller J

AN ACT to create a Civil Service Commission for the Town of Benton.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. CIVIL SERVICE COMMISSION CREATED; MEMBERSHIP, QUALIFICATIONS. There is hereby created a civil service commission, herein referred to as the "commission," consisting of three (3) persons, one (1), of whom shall be appointed by the Board of Commissioners on recommendation of the mayor, one (1) of whom shall be selected by the classified employees (as hereinafter defined) of the town by a majority vote thereof, and one (1) of whom shall be selected by the two (2) members selected in the manner provided above.

Commissioners must be thirty (30) years of age or older and must have been residents of the town for at least five (5) years immediately preceding their appointment. Commissioners shall serve for a period of four (4) years commencing with the date of appointment. No commissioner may serve more than two (2) consecutive full terms. Provided, however, for the initial appointment, one (1) member appointed by the Board of Commissioners shall serve for two (2) years, and one (1) member selected by the classified employees shall serve for four (4) years, and the third member selected by the above described procedure shall serve for three (3) years. Each initial term shall constitute a full term.

Each member shall have equal powers and the majority shall rule. Two (2) members of the commission shall constitute a quorum for the transaction of business. No member of the commission shall be employed in any manner by any city, state, county, or federal government,

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nor hold an elected or appointed office of the Town of Benton, nor be a member of the immediate family of any employee of the Town of Benton, nor be a former employee of the town of Benton. Any vacancy occurring in the commission shall immediately be filled in the same manner that the vacating commissioner was selected, and any commissioner appointed to fill such a vacancy shall serve for the remainder of the term of the vacating commissioner.

Notwithstanding the establishment of a quorum, any classified position holder requesting a contested case hearing is entitled to have the commissioner selected by the classified position holders in attendance as a member of the hearing board.

SECTION 2. CIVIL SERVICE COMMISSION, SALARY. The Board of Mayor and Commissioners shall provide for the compensation of the chairman and the commissioners for attending contested case hearings. Further each commissioner shall be compensated for reasonable and necessary expenses incurred in the discharge of his official duty. The Board of Mayor and Commissioners of the Town of Benton shall make adequate financial provision for the performance of the commission in carrying out its duties under this act, including stenographic service. The commission shall not meet more frequently than once each calendar quarter. Contested case hearings will be held as required.

SECTION 3. CIVIL SERVICE COMMISSION, OFFICERS; DUTIES OF SECRETARY: OPEN MEETINGS. The commission shall elect a chairman who shall preside over all meetings except contested case hearings, a vice-chairman to serve in the absence of the chairman, and a secretary.

It shall be the duty of the secretary to keep complete and accurate records of all proceedings held by the commission in a minutes book to be provided for this purpose. All records of the commission shall be maintained in the office of the recorder of the Town of Benton.

The commission is declared to be a governing body within the meaning of the Tennessee Open Meetings Act as provided in Tennessee Code Annotated, Sections 8-44-101

et seq., and all of its meetings, including contested case hearings, and the deliberations of the commission thereon, shall be conducted in public and the vote of each commissioner recorded.

SECTION 4. COVERAGE OF TOWN EMPLOYEES. Only a classified employee of the Town of Benton on the effective date of this act and thereafter shall be covered by the provisions of this act. For the purposes of this act, the term "Classified employee" means only those positions and/or employees designated as such by the Board of Mayor and Commissioners in its policy and procedure manual.

SECTION 5. PROCEDURE FOR DEMOTION, SUSPENSION OR DISCHARGE. No person holding any classified position of employment shall be discharge from the service of the town or demoted except for just cause. Just cause shall include but not be limited to any violation of the policies or practices delineated in the Town of Benton policy and procedure manual or department rules. It is expressly intended that engaging in any political activity or refusing to engage in any political activity shall not be cause for discharge, suspension or demotion of any employee holding a classified position. All persons discharged or demoted shall have the right to be heard by the civil service commission in his/her own defense, in person or by counsel, and the action of the head of the department in discharging or demoting such person shall be subject to the approval or disapproval of the commission. If the commission approved such discharge or demotion, the decision shall be final. If such discharge or demotion is disapproved, the employee shall be reinstated to such position with full pay and rights from the day of discharge or demotion.

Provided, however, reassignment of any employee to other duties which does not result in a salary reduction or benefits is not considered a demotion.

SCOPE OF REVIEW. The commission is empowered only to hear and determine matters involving the discharge, demotion or suspension for more than three (3) days.

A written request for a hearing must be made in writing to the commission chairman within five (5) working days from the date of discharge, demotion or suspension. No employee

holding a classified position shall be discharged or suspended for any act not involving moral turpitude, which occurred more than twelve (12) months prior to the date of discharge.

However, this limitation is not applicable to a suspension made pursuant to Section 7.

None of the provisions of this section shall apply to prevent the discharge of the holder of a classified position who was employed as the result of the reassignment of the holder of a classified position to enter the armed force, but upon the return of such holder from the armed forces, the holder of the position with the least seniority may be discharged, in which case, such holder would revert to the classified position list.

SECTION 6. CONTESTED CASES; HEARINGS. Upon the written request of the classified employee for a hearing, the commission shall set a date for a hearing within sixty, (60) calendar days from the date of the classified employee's request.

Should the classified employee move to continue the hearing, any benefits, pay or rights reinstated to the classified employee may be limited to the period between the date of discharge or demotion and the date set for the initial hearing.

Should the town move to continue the hearing, or join with the classified employee in moving to continue the hearing, the classified employee, if reinstated, may be entitled to full benefits, pay and rights from the date of discharge or demotion to the date of reinstatement.

However, the classified employee is not entitled to benefits, pay or rights beyond the latest hearing date agreed to by the town.

Notwithstanding the provisions of this section, should any criminal prosecution be commenced prior to the hearing, the provisions of Section 7 shall apply.

SECTION 7. CRIMINAL PROSECUTIONS. Classified employees who are charged with a felony or other crime of moral turpitude shall be suspended without pay until such employee is either found guilty or the charges are dismissed. If the classified employee is found guilty, he shall be dismissed forthwith.

However, notwithstanding an acquittal or dismissal in the criminal proceedings, if it appears in the discretion of the department head that there is sufficient evidence to show that

the classified employee is not a fit or suitable employee, then he/she may be dismissed, subject to review by the commission upon an appeal being duly perfected by the classified employee.

SECTION 8. CONTESTED CASE PROCEDURES. In accordance with Tennessee Code Annotated, Section 27-9-114, all contested case hearings by the civil service commission shall be conducted in conformity with the procedures of Tennessee Code Annotated, Section 4-5-301, et seq., known as the Uniform Administrative Procedures Act. The commission shall promulgate rules consistent with this charter and the Uniform Administrative Procedures Act.

In any contested case hearing conducted, the civil service commission shall have the power to subpoena and require the attendance of witnesses and the production by them of books and papers, pertinent to the hearing and to administer oaths to such witnesses.

Each contested case will be presided over by a hearing officer, who shall rule on procedure and evidence, but who shall not take part in deliberations by the commission. The hearing officer shall not be a member of the civil service commission.

The hearing officer will be appointed by the commission for a period of one (1) year. The hearing officer must be an attorney-at-law and required to be licensed to practice law in the state of Tennessee. The hearing officer shall also act as counsel to the commission regarding the rights, powers and duties of the commission, and shall be compensated for his/her services by the Town of Benton upon such terms as may be approved by the Board of Mayor and Commissioners upon recommendation of the commission.

SECTION 9. APPEALS TO THE COMMISSION. Any classified employee who is demoted, suspended or discharged shall be entitled to appeal to the commission by filing a "Request for Review" upon forms provided by the commission within five (5) working days following the effective date of the discipline. A request for review shall:

- (1) be signed by the classified employee, state the department in which he was employed and the classified position held by him;
- (2) state the reason for the discipline as understood by the employee and his position with respect thereto;

(3) state whether the employee expects to be represented by counsel at the hearing before the commission, and, if so, the name and address of such counsel, if counsel has been engaged.

Filing of a request for review shall be complete upon delivery to the chairman of the commission in person or by certified mail. A copy shall be delivered to the classified employee's department head. The commission shall set a date for a hearing within sixty (60) calendar days following the date of the filing of the request for review.

SECTION 10. IMPARTIALITY OF COMMISSION. The commission shall be impartial, objective and adjudicate contested cases on the merits as presented at hearings. It shall be improper for any commissioner to discuss contested cases with any party prior to a hearing or to base their findings upon evidence not presented at the hearing.

SECTION 11. CIVIL SUITS INVOLVING CIVIL SERVICE COMMISSION. It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of this act or the rules of the commission and to defend all civil suits which may be brought against the commission. The commission shall be represented in suits against it by the town attorney, except in cases wherein the town attorney may be an interested party. In all other cases, the said commission may employ special counsel, the expense for which shall be borne by the Town of Benton.

SECTION 12. PENALTY FOR FRAUD. Any person who shall obstruct or deceive any person in respect to his/her rights under this act, make a false report or certificate, or bribe, or attempt to bribe, any commissioner or in any other way fraudulently conduct themselves to gain favor for any person or persons, shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine up to the maximum amount permitted by law.

SECTION 13. REQUIRED REPORTS. Immediate reports in writing shall be given to the mayor of the town by the head of each department of all occurrences which affect the status of a classified employee.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the Town of Benton. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body of the Town of Benton and certified to the Secretary of State.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 14.